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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 JOHN PELS, on behalf of himself and all

2 others similarly situated,

3 Plaintiff,

4 v.

5 KEURIG DR PEPPER, INC., a Delaware

6 corporation,

7 Defendant.

Case No. 3:19-cv-03052-SI

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT;**
- 2. VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW;**
- 3. VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW; and**
- 4. UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

1 Plaintiff John Pels, on behalf of himself and all others similarly situated, through his
 2 undersigned attorneys, alleges this Second Amended Class Action Complaint against Defendant
 3 Keurig Dr Pepper, Inc. (“Defendant” or “Keurig”) on actual knowledge as to his own acts, and on
 4 information and belief after due investigation (including a review of documents produced by the
 5 Food and Drug Administration received under the Freedom of Information Act) as to all other
 6 allegations, as follows:

7 **NATURE OF THE ACTION**

8 1. This is a consumer class action against Keurig, one of the world’s largest bottlers
 9 and distributors of bottled water and flavored beverages.

10 2. Plaintiff is a California consumer who, in both 2018 and 2019, purchased and
 11 consumed bottled beverages distributed as part of Keurig’s popular Peñafiel brand. This brand
 12 consists of approximately 14 different Peñafiel varieties including Peñafiel Mineral Spring
 13 Water, one of the particular varieties Plaintiff purchased and consumed.

14 3. Peñafiel Mineral Spring Water has been contaminated by excessive levels of
 15 arsenic for many years and, indeed, when an independent laboratory tested one of the bottles of
 16 Peñafiel Mineral Spring Water purchased by Plaintiff, the test revealed that the bottle contained an
 17 unlawful amount of arsenic.

18 4. The federal Food and Drug Administration (“FDA”) detected these unlawful
 19 arsenic levels in Peñafiel Mineral Spring Water on more than one occasion and banned its import
 20 on multiple occasions—bans that Keurig disregarded. As early as 2009, New Jersey regulators
 21 found arsenic levels in Peñafiel Mineral Spring Water that exceeded the legal limit, at one time by
 22 more than 100%. Unlawful arsenic levels were also found in 2019 by both Consumer Reports and
 23 the Center for Environmental Health. The FDA’s most recent testing in 2019 showed arsenic
 24 levels at 60% above the legal limit.

25 5. Keurig disregarded the danger, did not shut down operations at its Peñafiel plant in
 26 Mexico, and did not undertake remedial measures until demanded to do so by Plaintiff herein in
 27 his initial Complaint, and by the FDA. On June 21, 2019, Keurig belatedly issued a “withdrawal”
 28 of Peñafiel Mineral Spring Water. The press release issued that day admitted that the recall was

1 "due to the presence of violative levels of arsenic", and that: "Water quality tests of Peñafiel
2 samples conducted by an independent laboratory on behalf of Keurig Dr Pepper detected arsenic at
3 levels that exceeded the FDA's bottled water standards for mineral water of 10 ppb."

4 Up until then, however, Keurig had concealed that thousands of its customers were
5 ingesting bottled water that contained excessive levels of arsenic, a known poison. Keurig's
6 wrongdoing was publicly reported in a 2019 exposé in *Consumer Reports*. Of the many water
7 brands tested by *Consumer Reports*, Peñafiel water was the *only brand* that exhibited high
8 toxicity, reflecting levels of arsenic consistently above legal limits. Such consistent arsenic
9 findings over many years are not surprising, as all of the Peñafiel Mineral Spring Water is
10 contaminated at the source: the Tehuacan, Mexico springs from which the water is drawn.
11 Without substantial filtering, which Keurig did not utilize, all bottles contained violative arsenic
12 levels, as the source water in Tehuacan is contaminated.

13 7. Peñafiel is part of Dr. Pepper Snapple Group, owned by Defendant Keurig, which
14 markets more than 50 beverage brands throughout North America, including the Mineral Spring
15 Water.

16 8. Plaintiff and all members of the Class (defined herein as “all consumers who
17 purchased Peñafiel Mineral Spring Water in the United States within the applicable statute(s) of
18 limitations”) and California Sub-Class (Class members who purchased in California) have been
19 injured by the acts alleged herein. In this Second Amended Complaint, Plaintiff seeks
20 restitutionary relief under the Unfair Competition Law (UCL), the False Advertising Law (FAL),
21 and the Consumer Legal Remedies Act (CLRA), as well as actual and punitive damages under the
22 CLRA. (Keurig has been provided due notice of a CLRA damages claims more than 30 days prior
23 to this pleading). Plaintiff also asserts a claim for unjust enrichment.

JURISDICTION AND VENUE

26 9. This Court has jurisdiction over the subject matter of this action pursuant to 28
27 U.S.C. § 1332(d), enacted pursuant to the Class Action Fairness Act (“CAFA”), because there are
28

1 more than 100 proposed Class Members, some members of the proposed class and the Defendant
2 are citizens of different states, and the amount in controversy exceeds \$5 million.

3 10. Venue is proper in this district pursuant to 28 U.S.C. § 1331(b) because Plaintiff
4 and many Class members are citizens of this District. Moreover, Defendant regularly transacts
5 and continues to transact business in this District.

6 11. This Court has *in personam* jurisdiction over the Defendant because, *inter alia*,
7 Defendant: (a) transacted business in this District; (b) maintained continuous and systematic
8 contacts in this District prior to and during the Class Period; and (c) purposefully availed itself of
9 the benefits of doing business in this District. Accordingly, the Defendant maintains minimum
10 contacts with this District which are more than sufficient to subject it to service of process and to
11 comply with due process of law requirements.

12. Intradistrict Assignment: Pursuant to Civil L.R. 3-2(c) and 3-5(b), assignment to
the San Francisco Division of the Northern District of California is proper because a substantial
part of the events or omissions which gave rise to the claim occurred in this Division or a
substantial part of the property subject to the action is situated in this Division. Plaintiff resides in
this Division and purchased the product at issue in this Division. Defendant promoted, marketed,
distributed, and sold the product at issue in this Division.

PARTIES

19 13. Plaintiff Pels is an individual residing in Sonoma County, California and a citizen
20 of California. During the Class Period (as defined below), in both 2018 and 2019, Plaintiff
21 purchased Peñafiel Mineral Spring Water from a Wal-Mart store located in Windsor, California
22 and was deceived by Defendant in that he was of the belief he was obtaining a safe product made
23 in conformity with the law. He suffered an ascertainable loss and monetary damages as a result of
24 Defendant's unlawful conduct alleged herein. Plaintiff would not have purchased this product at
25 any price had he known it contained violative arsenic levels. Keurig disregarded its legal duty to
26 inform Plaintiff and other consumers of this material fact. Plaintiff consumed Peñafiel Mineral
27 Spring Water on multiple occasions during the Class Period. One of these occasions was on or
28 around April 24, 2019, when Plaintiff purchased two bottles of Peñafiel Mineral Spring Water in

1 Windsor, California at Wal-Mart. Plaintiff consumed one of these bottles. The remaining bottle
 2 was later tested by an independent laboratory. Test results indicate that the bottle contained an
 3 arsenic level of 15 ppb, 50% above the legal limit of 10 ppb. This arsenic level was substantially
 4 similar to that derived by the FDA (16 ppb) as a result of its own testing in June 2019 of samples
 5 gathered in May 2019.

6 14. Defendant Keurig is a for-profit corporation formed and existing under the laws of
 7 the State of Delaware with its principal place of business at 83 South Avenue, Burlington,
 8 Massachusetts 01803. Defendant is a citizen of Delaware and Massachusetts. Defendant Keurig is
 9 one of the world's largest bottlers and distributors of bottled water and flavored beverages.
 10 Peñafiel Mineral Spring Water is owned and manufactured by Defendant Keurig.

FACTUAL ALLEGATIONS

12 15. The demand for bottled water continues to grow in the United States and
 13 internationally. Consumers believe bottled water is healthy, unadulterated, and more flavorful in
 14 many cases than tap water.

15 16. Trade organizations like the International Bottled Water Association work hard to
 16 reinforce in the public mind that bottled water is safely sourced and subject to stringent testing:

17 Once the water enters the bottled water plant several processes are employed to
 18 ensure that it meets the U.S. Food and Drug Administration (FDA) purified water
 19 standard. ***These treatments can include utilizing a multi-barrier approach. Measures in a multi-barrier approach may include one or more of the following: reverse osmosis, distillation, micro-filtration, carbon filtration, ozonation, and ultraviolet (UV) light. The finished water product is then placed in a sealed bottle under sanitary conditions and sold to the consumer.***

21 Moreover, the water from public water systems is often compromised after
 22 emergency situations or natural disasters (e.g., hurricanes, floods, tornados, fires, or
 23 boil alerts). During these times, bottled water is a necessary and reliable alternative
 24 to deliver clean, safe drinking water.¹

25 17. Bottled water is subject to comprehensive government regulation at both the federal
 26 and state level. In addition, the International Bottled Water Association (IBWA) has adopted
 27 industry standards (IBWA Bottled Water Code of Practice) that are, in some instances, more

28 ¹ *Bottled Water Vs. Tap Water*, International Bottled Water Association, available at:
<https://www.bottledwater.org/health/bottled-water-vs-tap-water> (last visited Nov. 25, 2019).

1 stringent than FDA or EPA requirements. As mandated by federal law, FDA's bottled water
 2 standards must be no less stringent and no less protective of the public health than EPA's
 3 regulations for public drinking water.

4 18. Both the FDA and the EPA are underfunded and understaffed. Accordingly, they
 5 sometimes limit themselves to notifying distributors of a problem, and expecting them to act
 6 responsibly in rectifying it. Most such companies do act responsibly. Others, like Keurig here, do
 7 not.

8 19. One of the chief concerns about any drinking water is that it may become
 9 contaminated by naturally occurring (yet harmful) substances or by artificial toxins. This occurred
 10 consistently for many years to Peñafiel Mineral Spring Water, as it was contaminated by arsenic
 11 from a uniform source: the Tehuacán, Mexico springs, which gather runoff from the Pico de
 12 Orizaba volcanic formation. For at least a decade, as has been repeatedly detected, Peñafiel
 13 Mineral Spring Water has exceeded legal arsenic limits.

14 20. Arsenic is poisonous to humans and regulations exist to limit the amount of arsenic
 15 in drinking water. Because arsenic is a naturally occurring element, and is used in agriculture and
 16 industry, it may leach into water sources used for drinking unless detected and filtered out. If it is
 17 not filtered out, it poses a serious public health risk. For example:

18 (a) **It Damages the Heart:** CNN reported on May 7, 2019: "Young adults free
 19 of diabetes and cardiovascular disease developed heart damage after only five years of exposure to
 20 low-to-moderate levels of arsenic commonly found in groundwater. This was the finding of a
 21 study published Tuesday in Circulation: Cardiovascular Imaging, an American Heart Association
 22 Journal. "Low-level arsenic exposure is associated with a disproportionate growth of the heart
 23 independent of hypertension and other traditional risk factors," the study's lead author, Dr. Gernot
 24 Pichler, wrote. "The higher the arsenic content in drinking water, the greater the damage to the
 25 heart."

26 (b) **It is a Carcinogen:** The International Agency for Research on Cancer
 27 (IARC), part of the World Health Organization (WHO), has one of its major goals to identify
 28 causes of cancer. IARC classifies arsenic and inorganic arsenic compounds as "carcinogenic to

1 humans.” This is based on sufficient evidence in humans that these compounds can cause: lung
2 cancer, bladder cancer, and skin cancer.

10 (d) **It Increases the Risk of Diabetes:** Science Daily reported in 2018 that
11 chronic exposure to arsenic interferes with insulin secretion in the pancreas, which may increase
12 the risk of diabetes. It drew on research published in the American Journal of Physiology --
13 Regulatory, Integrative and Comparative Physiology.

14 21. The State of California has officially listed arsenic as a chemical known to cause
15 cancer and reproductive toxicity. 27 California Code of Regulations §§ 27001(b)&(c). California's
16 Proposition 65 makes it unlawful for businesses to knowingly and intentionally expose individuals
17 in California to chemicals known to the State to cause cancer, birth defects, or other reproductive
18 harm without first providing clear and reasonable warnings to exposed individuals. Arsenic is
19 subject to the clear and reasonable warning requirements regarding carcinogens and reproductive
20 toxicants under Proposition 65. Cal. Health & Safety Code § 25249.6. However, no such clear
21 and reasonable warning is provided on Peñafiel Mineral Spring Water bottles.

22. Under federal standards, companies like Keurig are required to ensure that spring
water and spring water-based products contain arsenic levels no higher than 10 parts per billion
(ppb). The FDA has advised:

25 Producers of bottled water are responsible for assuring, through appropriate
26 manufacturing techniques and sufficient quality control procedures, that all bottled
water products introduced or delivered for introduction into interstate commerce
comply with the quality standard (§ 165.110(b)). *Bottled water that is of a quality*
27 *below the prescribed standard is required by § 165.110(c) to be labeled with a*
statement of substandard quality. Moreover, any bottled water containing a
28 substance at a level that causes the food to be adulterated under section 402(a)(1) of

1 the act (21 U.S.C. 342(a)(1)) is subject to regulatory action, even if the bottled
 2 water bears a label statement of substandard quality.²

3 23. Peñafiel Mineral Spring Water is carbonated, but this does not exempt it from
 4 arsenic regulation. In explaining the scope of the pertinent regulation, 21 CFR § 165.110 (“Section
 5 165.110”), the FDA made clear that it covers any bottled water labeled “spring water”:

6 Products or ingredients described by a term that is defined by the standard of
 7 identity (e.g., “spring water”) or with a term that makes a claim about the water
 8 (e.g., “natural water”) are standardized waters and must comply with § 165.110
 9 whether carbonation has been added or not.

10 60 FR 57076, 57077. Because Keurig labels Peñafiel as “spring water,” it falls within the FDA’s
 11 standard of identity for spring water. Keurig must therefore comply with the FDA’s arsenic
 12 regulation, irrespective of added carbonation.

13 24. The New Jersey Department of Health found excessive arsenic in Peñafiel Mineral
 14 Spring Water in 2008, 2009, 2013, and 2014, with levels running as high as 22 ppb.

15 25. No later than 2013, high levels of arsenic were detected in Peñafiel water during an
 16 inspection of a company named R.R. Importaciones Inc. in Passaic, New Jersey. The proprietor
 17 represented that he had only imported the product for personal use in 2012, yet one year later
 18 dozens of bottles from that same distributor were ordered destroyed. Keurig has disclaimed
 19 knowledge of this incident, yet it may be inferred that high levels of arsenic were in Peñafiel
 20 Mineral Spring Water as early as 2008.

21 26. In 2015 and again in early 2018, the FDA issued import alerts entitled: “Detention
 22 Without Physical Examination of Bottled Water due to Arsenic ***and Flavored Water
 23 Beverages*** Due to Inorganic Arsenic.” Among the producers listed was Peñafiel; the toxic
 24 products were identified as carbonated water (March 4, 2015) and mineral water (April 4, 2018).
 25 In FDA Import Alert 29-02, which pertains to Peñafiel beverages, the FDA has described the
 26 Peñafiel product at issue in this case as “dangerous” and “adulterated.” See Import Alerts and
 27 Enforcement, <https://www.fda.gov/food/metals/arsenic-food-and-dietary-supplements> (last visited

28 ² Available at: <https://www.federalregister.gov/documents/2004/12/02/04-26531/beverages-bottled-water> (last visited Nov. 25, 2019).

1 Nov. 25, 2019). Nonetheless the issue persisted and import of the dangerous product continued
2 into the United States unabated.

3 27. On April 18, 2019 Consumerreports.org published an article entitled, “*Arsenic in*
4 *Some Bottled Water Brands at Unsafe Levels, Consumer Reports Says.*”³ The article reflects
5 Consumer Reports’ independent review of various brands of bottled water. Only 11 brands out of
6 130 tested had detectable levels of arsenic. Peñafiel contained excessively high levels of
7 arsenic—70% above the legal standard:

8 As part of our investigation, CR also was able to purchase two brands of imported
9 water—Jermuk from Armenia and Peñafiel from Mexico—that are on an import
10 alert issued by the federal government for previously having arsenic levels above
11 the federal limit of 10 ppb. Such an alert is meant to “prevent potentially violative
products from being distributed in the United States,” according to the Food and
Drug Administration. Even so, CR easily purchased the two brands in retail stores
in two states and on Amazon.

12 Beverage giant Keurig Dr. Pepper provided CR in March with Peñafiel's bottled
13 water quality report for 2018, *which stated that the water had nondetectable*
14 *amounts of arsenic.* But the company said this week that it had conducted new
testing, because of CR's questions, and confirmed levels above the federal limit, at
an average of 17 ppb.

15 “An arsenic level of 17 ppb is a clear violation of the federal bottled water standard of 10 ppb,” says Jean Halloran, director of food policy initiatives at CR.

28. On June 21, 2019, Keurig issued the following statement (in relevant part):

**18 Keurig Dr Pepper Announces Voluntary Withdrawal of Unflavored
Peñafiel Mineral Spring Water that Does Not Meet FDA Bottled Water
Quality Standards**

BURLINGTON, Mass. and PLANO, Texas, June 21, 2019 /PRNewswire/ -- Keurig Dr Pepper today announced it will voluntarily withdraw Peñafiel unflavored mineral spring water products, imported from Mexico, due to the presence of violative levels of arsenic. Arsenic when present in the diet at very high levels, well above those detected in recent samples of Peñafiel, is associated with numerous chronic diseases. Water quality tests of Peñafiel samples conducted by an independent laboratory on behalf of Keurig Dr Pepper detected arsenic at levels that exceeded the FDA's bottled water standards for mineral water of 10 ppb.

All unflavored Peñafiel mineral spring water products including 600mL and 1.5L of all date codes are included in this voluntary withdrawal. The product is packaged in PET bottle formats. Consumers who have this product in their possession can return it to their retailer for a full refund.

²⁷ ²⁸ ³ Available at: <https://www.consumerreports.org/water-quality/arsenic-in-some-bottled-water-brands-at-unsafe-levels/> (last visited Nov. 25, 2019), and incorporated by reference herein.

1

2 29. No provision was made for those consumers who ingested the product prior to
 3 Keurig's withdrawal. Hazardous water is of no use and of no value to consumers and threatens
 4 their health. Keurig has acted irresponsibly and unlawfully in connection with its sale and
 5 marketing of Peñafiel water, and appears to have engaged in an attempt to conceal the truth.

6 30. The recall came after Plaintiff's initial Complaint was filed, and upon insistence by
 7 the FDA. Documents obtained by Plaintiff pursuant to the Freedom of Information Act ("FOIA")
 8 reveal that samples gathered and tested by the FDA in May-June 2019 contained a violative
 9 arsenic level of 16 ppb. According to a June 27, 2019 e-mail written by Dr. Henry Kim of the
 10 FDA's Office of Food Safety to his colleagues at the FDA, the FDA declared that Peñafiel water
 11 was a regulated product under Section 165.110 and informed Defendant Keurig of the same;
 12 according to the FDA, Defendant Keurig agreed.

13 31. Keurig did not release the results of its own testing, but admitted that it also found
 14 violative levels of arsenic in Peñafiel water based on the evaluation of an independent laboratory.

15 32. For the foregoing reasons, Plaintiff brings this action for actual and punitive
 16 damages, restitutionary relief, and appropriate disgorgement of unjust enrichment.

17 CLASS ACTION ALLEGATIONS

18 33. Plaintiff brings this action as a class action pursuant to Rules 23(a) and 23(b)(3) of
 19 the Federal Rule of Civil Procedure, seeking actual and punitive damages, restitutionary relief, and
 20 disgorgement of unjust enrichment under state consumer protection statutes and/or the common
 21 law on behalf of himself and all members of the Class and California Sub-Class defined below.

22 34. The "Class" consists of all consumers who purchased Peñafiel Mineral Spring
 23 Water in the United States within the applicable statute(s) of limitations. The "California Sub-
 24 Class" consists of all consumers who purchased Peñafiel Mineral Spring Water in California
 25 within the applicable statute(s) of limitations.

26 35. Excluded from the Class and California Sub-Class are governmental entities,
 27 Defendant, and Defendant's officers, directors, affiliates, legal representatives, employees,
 28 coconspirators, successors, subsidiaries, and assigns. Also excluded from the Class and California

1 Sub-Class are any judges, justices, or judicial officers presiding over this matter and the members
 2 of their immediate families and judicial staff.

3 36. This action is brought and may be properly maintained as a class action pursuant to
 4 Rule 23. This action satisfies the requirements of Rule 23, including numerosity, commonality,
 5 typicality, adequacy, predominance, and superiority.

6 37. ***Numerosity.*** The Class and California Sub-Class for whose benefit this action is
 7 brought are so numerous that joinder of all members is impracticable. While the exact number of
 8 persons who fit within each proposed class are presently unknown, Plaintiff, on information and
 9 belief, alleges that the Class and California Sub-Class include at least thousands of persons. The
 10 size of the Class and California Sub-Class can be ascertained through appropriate discovery.

11 38. ***Commonality:*** This action involves common questions of law and fact to the Class
 12 and California Sub-Class because each Class and California Sub-Class Member's claim derives
 13 from the same allegedly unlawful and deceptive action. The common questions of law and fact
 14 involved predominate over questions that affect only Plaintiff or individual Class Members. Thus,
 15 proof of a common or single set of facts will establish the right of each member of the Class to
 16 recover. These common questions of law and fact include, but are not limited to:

17 a. Whether Defendant marketed and sold Peñafiel Mineral Spring Water,
 18 which contained arsenic in excess of 10 parts per billion;

19 b. Whether Peñafiel Mineral Spring Water was adequately packaged, and
 20 labeled;

21 c. Whether Defendant Keurig represented the Peñafiel Mineral Spring Water
 22 as having characteristics, uses, or benefits that it did not have;

23 d. Whether Defendant Keurig's omissions regarding the arsenic content of
 24 Peñafiel Mineral Spring Water were false and misleading;

25 e. Whether Defendant Keurig engaged in unlawful, unfair, or fraudulent
 26 business practices;

27 f. Whether Defendant Keurig's omissions regarding the Peñafiel Mineral
 28 Spring Water were false and misleading and constitute false advertising;

1 g. Whether Plaintiff and the Class or California Sub-Class have been damaged
 2 by the wrongs alleged herein and are entitled to compensatory or punitive damages; and

3 h. Whether Plaintiff and the Class or California Sub-Class are entitled to
 4 equitable relief, including restitution.

5 39. Each of these common questions is also susceptible to a common answer that is
 6 capable of class-wide resolution and will resolve an issue central to the validity of the claims.

7 40. ***Typicality:*** Plaintiff's claims are typical of the Class and California Sub-Class because
 8 he bought Peñafiel Mineral Spring Water during the Class Period. Defendant's allegedly omission
 9 and deceptive actions concern the same business practices described herein. Thus, Plaintiff, the
 10 Class and California Sub-Class Members sustained the same injuries and damages arising out of
 11 Defendant's conduct in violation of law. The injuries and damages of each Class and California
 12 Sub-Class Member were caused directly by Defendant's wrongful conduct in violation of law as
 13 alleged herein.

14 41. ***Adequacy of Representation:*** Plaintiff will fairly and adequately protect the
 15 interests of all Class and California Sub-Class Members and his interest does not conflict with the
 16 Class or California Sub-Class's interests. Plaintiff has retained highly competent and experienced
 17 class action attorneys to represent his interests and that of the Class and California Sub-Class. No
 18 conflict of interest exists between Plaintiff, the Class and California Sub-Class Members because
 19 all questions of law and fact regarding liability of Defendant are common to the Class and
 20 California Sub-Class Members and predominate over the individual issues that may exist. The
 21 necessary financial resources to adequately and vigorously litigate this class action will be
 22 provided, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class and
 23 California Sub-Class Members and are determined to diligently discharge those duties.

24 42. ***Predominance and Superiority:*** The Class and California Sub-Class can be
 25 properly maintained because the above common questions of law and fact predominate over any
 26 questions affecting individual Class or California Sub-Class Members. A class action is also
 27 superior to other available methods for the fair and efficient adjudication of this litigation because
 28 individual litigation of each Class and California Sub-Class Member's claim is impracticable.

1 Even if each Class or California Sub-Class Member could afford individual litigation, the court
 2 system could not. It would be unduly burdensome if thousands of individual cases proceed.
 3 Individual litigation also presents the potential for inconsistent or contradictory judgments, the
 4 prospect of a race to the courthouse, and the risk of an inequitable allocation of recovery among
 5 those with equally meritorious claims. Individual litigation would increase the expense and delay
 6 to all parties and the courts because it requires individual resolution of common legal and factual
 7 questions. By contrast, the class-action device presents far fewer management difficulties and
 8 provides the benefit of a single adjudication, economies of scale, and comprehensive supervision
 9 by a single court.

10 FIRST CLAIM FOR RELIEF

11 (Violation of California's Consumers Legal Remedies Act ("CLRA")

12 Cal. Civ. Code §§ 1750, et seq.-- California Sub-Class)

13 43. Plaintiff realleges and incorporates by reference all previous allegations of the
 14 Complaint as if they were set forth in full herein.

15 44. This Claim is brought pursuant to CLRA, California Civil Code §§ 1750, *et seq.*
 16 Due notice of a CLRA damages claim was provided to Keurig and more than 30 days have
 17 elapsed without Keurig taking the action demanded.

18 45. The CLRA prohibits any unfair, deceptive, and/or unlawful practices, as well as
 19 unconscionable commercial practices in connection with the sale of any goods or services to
 20 consumers. *See* Cal. Civ. Code § 1770. The CLRA "shall be liberally construed and applied to
 21 promote its underlying purposes, which are to protect consumers against unfair and deceptive
 22 business practices and to provide efficient economical procedures to secure such protection." Cal.
 23 Civ. Code § 1760.

24 46. Defendant is a "person" under the CLRA. Cal. Civ. Code § 1761(c). Plaintiff is a
 25 "consumer" under the CLRA. Cal. Civ. Code § 1761(d). The Peñafiel Mineral Spring Water
 26 bottles are "good(s)" under the CLRA, Cal. Civ. Code § 1761(a). Plaintiff's purchase of the
 27 Peñafiel Mineral Spring Water constituted a "transaction[]" under the CLRA. Cal. Civ. Code §
 28

1 1761. Defendant's actions and conduct described herein constitute transactions that have resulted
 2 in the sale of goods to consumers.

3 47. Defendant's failure to conform the Peñafiel Mineral Spring Water contents to
 4 required legal standards and provide required warnings and labeling under both federal and state
 5 law, and under the common law, is an unfair, deceptive, unlawful, and unconscionable commercial
 6 practice.

7 48. As a result, Defendant's conduct violates several provisions of the CLRA,
 8 including, but not limited to:

9 a. 1770(a)(5): Representing that goods or services have sponsorship, *approval*,
 10 *characteristics*, *ingredients*, *uses*, *benefits*, or quantities that they do not have—here, each
 11 Peñafiel Mineral Spring Water beverage carried with it the impression that it was a safe, legally
 12 compliant product which consumers could use without unduly exposing themselves to health risks
 13 from arsenic exposure; and

14 b. 1770(a)(7): Representing that goods or services are of a particular standard,
 15 quality, or grade, or that goods are of a particular style or model, if they are of another—as above,
 16 each Peñafiel Mineral Spring Water beverage carried with it the impression that it was a safe, legally
 17 compliant product which consumers could use without unduly exposing themselves to
 18 health risks from arsenic exposure.

19 49. In addition, under California law, a duty to disclose arises in any of the following
 20 four circumstances: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2)
 21 when the defendant has exclusive knowledge of material facts not known to the plaintiff; (3) when
 22 the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant
 23 makes partial representations but also suppresses some material facts.

24 50. Defendant had a duty to disclose to Plaintiff and the California Sub-Class that
 25 Peñafiel Mineral Spring Water was of substandard quality and contained arsenic in excess of
 26 federal limits for the following two independent reasons: (1) Defendant had exclusive knowledge
 27 of the information at the time of sale, (2) Defendant actively concealed from Plaintiff the
 28 excessive amount of arsenic contained in Peñafiel Mineral Spring Water, and 3) Defendant

1 represented that the product was spring water, but did not disclose that it was unfiltered spring
 2 water, and thus carried the risks posed by unfiltered, and unpurified, products.

3 51. Defendant violated the CLRA by selling bottled water that contained arsenic in
 4 excess of federal limits and by unlawfully concealing the substandard quality of the bottled water
 5 from Plaintiff and the California Sub-Class. Defendant further violated the CLRA by failing to
 6 label the product “substandard” as federally required and failing to provide notice as required
 7 under California law, including Proposition 65.

8 52. Defendant’s omissions in violations of the CLRA were likely to mislead an
 9 ordinary consumer. Plaintiff and the California Sub-Class reasonably understood Defendant’s
 10 omissions to mean that Peñafiel Mineral Spring Water did not contain arsenic in excess of federal
 11 limits. Plaintiff and the California Sub-Class also reasonably understood Defendant’s omissions to
 12 mean that Peñafiel Mineral Spring Water was not of substandard quality. Had Defendant disclosed
 13 that Peñafiel Mineral Spring Water contained arsenic in excess of federal limits and was of
 14 substandard quality, Plaintiff and the California Sub-Class would have been aware that the water
 15 contained excessive arsenic and was of substandard quality, and Plaintiff and the California Sub-
 16 Class would not have purchased Peñafiel Mineral Spring Water.

17 53. Defendant’s omissions alleged herein were material in that a reasonable person
 18 would attach importance to the information and would be induced to act upon the information in
 19 making purchase decisions.

20 54. Plaintiff and the California Sub-Class relied to their detriment on Defendant’s
 21 omissions in purchasing Peñafiel Mineral Spring Water.

22 55. Pursuant to Cal. Civ. Code § 1782(a), Defendant was served with notice of its
 23 alleged violations of the CLRA by certified mail return receipt requested on June 21, 2019.
 24 Because Defendant failed to remedy its unlawful conduct within the requisite time period, Plaintiff
 25 and the California Subclass seek all compensatory damages and relief to which they are entitled.

26 56. In light of Defendant’s oppression, fraud, and malice, Plaintiff, on behalf of himself
 27 and the California Sub-Class also seeks punitive damages under Cal. Civ. Code § 3294 in an
 28 amount to be proven at trial.

SECOND CLAIM FOR RELIEF

(Violation of California’s Unfair Competition Law (“UCL”))

Cal. Bus. & Prof. Code §§ 17200, et seq. - Unlawful Prong—

Regulatory Violations--California Sub-Class)

57. Plaintiff realleges and incorporates by reference all previous allegations of the Complaint as if they were set forth in full herein.

58. Plaintiff has standing to pursue this claim because he suffered injury in fact and has lost money or property as a result of Defendant's actions as described *supra*. All California Sub-Class Members overpaid for Peñafiel Mineral Spring Water due to Defendant's omission and concealment of its excessive arsenic levels and Defendant's failure to disclose that Peñafiel Mineral Spring Water was unfiltered and unpurified, and of substandard quality.

59. Section 17200 of the California Business & Professions Code, known as the Unfair Competition Law (“UCL”), prohibits any “unlawful, unfair or fraudulent business act or and unfair, deceptive, untrue or misleading advertising” Section 17200 specifically prohibits any “unlawful ... business act or practice.”

60. The UCL borrows violations of other laws and statutes and considers federal violations also to constitute violations of California law.

61. Defendant's conduct was unlawful under FDA regulations, and under Proposition 65, Cal. Health & Safety Code § 25249.5 *et seq.*, and particularly § 25249.6 (failure to provide requisite warnings about the risks of arsenic exposure).

62. Defendant's conduct in unlawfully offering for sale and selling Peñafiel Mineral Spring Water that was unlawfully contaminated by arsenic is without excuse or justification.

63. Defendant has violated the FDA arsenic level rules which make it unlawful to disseminate mineral spring water containing arsenic at levels higher than 10 ppb.

64. As a result of Defendant's unlawful conduct, Plaintiff and the California Sub-Class were damaged. Plaintiff and the California Sub-Class received an inferior product from that which they were promised and/or expected. Had Defendant disclosed the excessive arsenic levels and

1 substandard quality of Peñafiel Mineral Spring Water, Plaintiff and the California Sub-Class
2 would not have purchased Peñafiel Mineral Spring Water.

3 65. Pursuant to California Business & Professions Code § 17203, Plaintiff seeks an
4 order requiring Defendant to make full restitution of all monies it wrongfully obtained from the
5 California Sub-Class Members, as well as all other relief permitted under the UCL.

THIRD CLAIM FOR RELIEF

(Violation of California’s Unfair Competition Law (“UCL”))

Cal. Bus. & Prof. Code §§ 17200, et seq. - Unfair Prong--California Sub-Class)

9 66. Plaintiff realleges and incorporates by reference all previous allegations of the
10 Complaint as if they were set forth in full herein.

11 67. Plaintiff has standing to pursue this claim because he suffered injury in fact and has
12 lost money or property as a result of Defendant's actions as described *supra*. All California Sub-
13 Class Members overpaid for Peñafiel Mineral Spring Water due to Defendant's concealment of its
14 excessive arsenic levels and Defendant's failure to disclose that Peñafiel Mineral Spring Water
15 was of substandard quality.

16 68. Section 17200 of the California Business & Professions Code (the “UCL”)
17 prohibits any “unlawful, unfair or fraudulent business act or and unfair, deceptive, untrue or
18 misleading advertising ...” Section 17200 specifically prohibits any “unfair ...business act or
19 practice.” Defendant’s practices violate the UCL’s “unfair” prong.

20 69. A business act or practice is “unfair” under the UCL if the reasons, justifications,
21 and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged
22 victims. A business act or practice is also “unfair” under the UCL if a defendant’s conduct is
23 immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. A business
24 act or practice is also “unfair” under the UCL where the consumer injury is substantial, the injury
25 is not outweighed by any countervailing benefits to consumers or competition, and the injury is
26 one that consumers themselves could not reasonably have avoided considering the available
27 alternatives. Finally, acts may be unfair where, as here, they are tethered to and violative of
28 specific regulatory provisions.

1 70. Defendant's conduct, as detailed herein, constitutes unfair business practices.
2 Defendant's practices, as described herein, are "unfair" within the meaning of the UCL because
3 the conduct is unethical and injurious to California residents, and the utility of the conduct to
4 Defendant does not outweigh the gravity of the harm to consumers, including Plaintiff and
5 California Sub-Class Members.

6 71. While Defendant's decision to market Peñafiel Mineral Spring Water despite its
7 violative nature and in violation of federal law and Prop. 65 may have utility to Keurig in that it
8 allowed Defendant to sell more Peñafiel Mineral Spring Water without incurring high compliance
9 costs, this is exactly the type of conduct which the law prohibits.

10 72. Defendant's misconduct not only injures the persons who purchase the Peñafiel
11 Mineral Spring Water, but it also injures competing food product manufacturers, distributors, and
12 sellers that do not engage in the same unfair and unethical conduct, and who do filter their
13 beverages.

14 73. Section 17200 also prohibits any “unfair, deceptive, untrue or misleading
15 advertising.” For the reasons set forth above, Defendant engaged in unfair, deceptive, untrue, and
16 misleading advertising in violation of California Business & Professions Code § 17200, the UCL.

17 74. As a result of Defendant's unfair conduct, Plaintiff and the California Sub-Class
18 were damaged. Plaintiff and the California Sub-Class received an inferior product from that which
19 they were promised and/or expected. Had Defendant disclosed the excessive arsenic levels and
20 substandard quality of Peñafiel Mineral Spring Water, Plaintiff and the California Sub-Class
21 would have become aware of the true facts, and would not have purchased Peñafiel Mineral
22 Spring Water.

23 75. Pursuant to California Business & Professions Code § 17203, Plaintiff seeks an
24 order requiring Defendant to make full restitution of all monies it wrongfully obtained from the
25 California Sub-Class Members, as well as all other relief permitted under the UCL.

FOURTH CLAIM FOR RELIEF

(Violation of California’s Unfair Competition Law (“UCL”))

28 | Cal. Bus. & Prof. Code §§ 17200, *et seq.* - Fraudulent Prong--California Sub-Class)

76. Plaintiff realleges and incorporates by reference all previous allegations of the Complaint as if they were set forth in full herein.

77. Plaintiff has standing to pursue this claim because he suffered injury in fact and has lost money or property as a result of Defendant's actions as described *supra*. All California Sub-Class Members overpaid for Peñafiel Mineral Spring Water due to Defendant's concealment of its excessive arsenic levels and Defendant's failure to disclose that Peñafiel Mineral Spring Water was of substandard quality.

8 78. Section 17200 of the California Business & Professions Code, known as the Unfair
9 Competition Law (“UCL”), prohibits any “unlawful, unfair or fraudulent business act or and
10 unfair, deceptive, untrue or misleading advertising” Section 17200 specifically prohibits any
11 “fraudulent ... business act or practice.”

12 79. Defendant's actions as alleged herein constitute a "fraudulent" practice because by
13 concealing the excessive arsenic levels of Peñafiel Mineral Spring Water and by failing to disclose
14 that the water was of substandard quality, Defendant's conduct was likely to deceive consumers.
15 Defendant's failure to disclose the excessive arsenic and substandard quality of Peñafiel Mineral
16 Spring Water, constitutes a material omission in violation of the UCL.

17 80. As a result of Defendant's fraudulent conduct, Plaintiff and the California Sub-
18 Class were damaged. Plaintiff and the California Sub-Class received an inferior product from that
19 which they were promised and/or expected. Had Defendant disclosed the excessive arsenic levels
20 and substandard quality of Peñafiel Mineral Spring Water, Plaintiff and the California Sub-Class
21 would have become aware of the true facts, and would not have purchased Peñafiel Mineral
22 Spring Water.

23 81. Pursuant to California Business & Professions Code § 17203, Plaintiff seeks an
24 order requiring Defendant to make full restitution of all monies it wrongfully obtained from the
25 California Sub-Class Members, as well as all other relief permitted under the UCL.

FIFTH CLAIM FOR RELIEF

(Violation of California's False Advertising Law ("FAL"))

Cal. Bus. & Prof. Code §§ 17500, et seq.--California Sub-Class)

1 82. Plaintiff realleges and incorporates by reference all previous allegations of the
 2 Complaint as if they were set forth in full herein.

3 83. Plaintiff brings this claim individually and on behalf of the California Sub-Class
 4 against Defendant.

5 84. Defendant engaged in advertising and marketing to the public and offered for sale
 6 Peñafiel Mineral Spring Water that was adulterated with high and violative levels of arsenic.

7 85. The FAL states:

8 It is unlawful for any person, firm, corporation or association, or any employee
 9 thereof with intent directly or indirectly to dispose of real or personal property
 10 or to perform services, professional or otherwise, or anything of any nature
 11 whatsoever or to induce the public to enter into any obligation relating thereto,
 12 to make or disseminate or cause to be made or disseminated before the public in
 13 this state, or to make or disseminate or cause to be made or disseminated from
 14 this state before the public in any state, in any newspaper or other publication, or
 15 any advertising device, or by public outcry or proclamation, or in any other
 16 manner or means whatever, including over the Internet, any statement,
 17 concerning that real or personal property or those services, professional or
 18 otherwise, or concerning any circumstance or matter of fact connected with the
 19 proposed performance or disposition thereof, which is untrue or misleading, and
 20 which is known, or which by the exercise of reasonable care should be known,
 21 to be untrue or misleading, or for any person, firm, or corporation to so make or
 22 disseminate or cause to be so made or disseminated any such statement as part
 23 of a plan or scheme with the intent not to sell that personal property
 24 or those services, professional or otherwise, so advertised at the price stated
 25 therein, or as so advertised.

26 86. Defendant's business practices as alleged herein constitute unfair, deceptive, untrue
 27 and misleading advertising pursuant to California's FAL because Defendant advertised the
 28 Peñafiel Mineral Spring Water in a manner that is untrue and misleading, and that is known or
 reasonably should have been known to Defendant to be untrue or misleading, as Defendant created
 the impression that the product was safe to consume when, in fact, it was not. Defendant
 concealed the material information from consumers that Peñafiel Mineral Spring water contained
 excessive arsenic levels and was of substandard quality.

29 87. Defendant's omissions alleged herein deceived or had the tendency to deceive the
 30 general public regarding the quality and composition of Peñafiel Mineral Spring Water.
 31
 32
 33

1 88. Defendant's omissions alleged herein were the type of omissions that are material,
2 i.e. a reasonable person would attach importance to them and would be induced to act on the
3 information in making purchase decisions.

4 89. Defendant's omissions alleged herein are objectively material to a reasonable
5 consumer, and therefore reliance upon such omissions may be presumed as a matter of law.

6 90. At the time Defendant made the omissions alleged herein, Defendant knew or
7 should have known that they were untrue or misleading, and Defendant acted in violation of
8 California Business and Professions Code Section 17500, *et seq.*

9 91. As a result, Plaintiff and each member of the California Sub-Class has been injured,
10 lost money or property, and is entitled to relief. Plaintiff and the California Sub-Class seek
11 restitution and all other relief permitted under California Business and Professions Code Section
12 17500, *et seq.*

SIXTH CLAIM FOR RELIEF

(Unjust Enrichment – Nationwide Class)

15 92. Plaintiff realleges and incorporates by reference all previous allegations of the
16 Complaint as if they were set forth in full herein.

17 93. Defendant has been unjustly enriched to Plaintiff's and the Class Members'
18 detriment as a result of its unlawful and wrongful retention of money conferred by Plaintiff and
19 the Class members, such that Defendant's retention of their money would be inequitable.

20 94. Defendant's unlawful and wrongful acts, as alleged above, enabled Defendant to
21 unlawfully receive monies it would not have otherwise obtained.

22 95. Plaintiff and the Class Members have conferred benefits on Defendant, which
23 Defendant has knowingly accepted and retained. Defendant's retention of the benefits conferred
24 by Plaintiff and the Class members would be against fundamental principles of justice, equity, and
25 good conscience.

26 96. Plaintiff and the Class Members seek to disgorge Defendant's unlawfully retained
27 profits and other benefits resulting from its unlawful conduct, and seek restitution and rescission
28 for the benefit of Plaintiff and the Class Members.

97. Plaintiff and the Class Members are entitled restitutionary disgorgement.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Classes alleged, demands judgment against Defendant and requests the entry of:

- a. An order certifying the proposed Class and California Sub-Class under Rule 23;
- b. An order appointing Plaintiff to represent the Class and California Sub-Class;
- c. An order declaring that the conduct complained of herein violates the CLRA;
- d. An order declaring that the conduct complained of herein violates the UCL;
- e. An order declaring that the conduct complained of herein violates the FAL;
- f. An order declaring that Defendant has been unjustly enriched;
- g. A judgment awarding Plaintiff and the Class and California Sub-Class restitution

gorgement of all compensation obtained by Defendant from its wrongful conduct;

- h. A judgment awarding Plaintiff and the Class and California Sub-Class compensatory damages in an amount to be proven at trial;
- i. A judgment awarding Plaintiff and the Class and California Sub-Class punitive damages, where available, in an amount to be proven at trial;
- j. Prejudgment and post-judgment interest at the maximum allowable rate;
- k. Attorneys' fees and expenses and the costs of this action; and
- l. All other and further relief as this Court may deem just, equitable, or proper.

DATED: December 5, 2019

THE PASKOWITZ LAW FIRM P.C.

By: Laurence D. Paskowitz

Laurence D. Paskowitz

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